

APPEAL, RELEASE

U.S. District Court
United States District Court – District of New Mexico (Albuquerque)
CRIMINAL DOCKET FOR CASE #: 1:18-cr-03495-JCH All Defendants

Case title: USA v. Smith

Magistrate judge case number: 1:18-mj-01581-SCY

Date Filed: 10/23/2018

Date Terminated: 11/10/2022

Assigned to: District Judge Judith
C. Herrera

Defendant (1)

Douglas D Smith

TERMINATED: 11/10/2022

represented by **Aric G. Elsenheimer**

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TERMINATED: 09/27/2018

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Pending Counts

18:1152 and 1111: Second Degree
Murder
(1)

Disposition

SENTENCE IMPOSED: CBOP: 27 months;
Supervised Release: 2 years, with Special
Conditions; SPA: \$100

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

18:1152 & 1111(a): Reckless
disregard for human life

Disposition

Plaintiff

USA

represented by **Novaline Wilson**
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Date Filed	#	Page	Docket Text
05/08/2018	<u>1</u>		NOTICE OF HEARING as to Douglas D Smith: Initial Appearance set for 5/8/2018 at 09:30 AM in Albuquerque – 320 Rio Grande Courtroom before Magistrate Judge Steven C. Yarbrough. (emr) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] [1:18-mj-01581-SCY] (Entered: 05/08/2018)
05/08/2018	<u>2</u>		COMPLAINT as to Douglas D Smith (1). (eh) [1:18-mj-01581-SCY] (Entered: 05/08/2018)
05/08/2018			Arrest of Douglas D Smith. (eh) [1:18-mj-01581-SCY] (Entered: 05/08/2018)
05/08/2018	<u>3</u>		ORDER APPOINTING FEDERAL PUBLIC DEFENDER Thomas B Jameson for Douglas D Smith by Magistrate Judge Steven C. Yarbrough (emr) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] [1:18-mj-01581-SCY] (Entered: 05/08/2018)
05/08/2018			Attorney update in case as to Douglas D Smith. Attorney Novaline Wilson for USA added. Attorney Kyle T Nayback terminated. (emr) [1:18-mj-01581-SCY] (Entered: 05/08/2018)
05/08/2018	<u>4</u>		Clerk's Minutes before Magistrate Judge Steven C. Yarbrough: Initial Appearance as to Douglas D Smith held; Preliminary/Detention Hearing set for 5/9/2018 at 09:30 AM in Albuquerque – 320 Rio Grande Courtroom; deft held in custody of USMS(Recording Info: Liberty – Rio Grande) (kd) [1:18-mj-01581-SCY] (Entered: 05/08/2018)
05/08/2018	<u>5</u>		ORAL ORDER of Temporary Detention pending hearing as to Douglas D Smith by Magistrate Judge Steven C. Yarbrough (kd) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] [1:18-mj-01581-SCY] (Entered: 05/08/2018)
05/09/2018	<u>7</u>		Clerk's Minutes before Magistrate Judge Steven C. Yarbrough: Preliminary/Detention Hearing as to Douglas D Smith held; Probable Cause found; deft released with conditions (Recording Info: Liberty – Rio Grande) (kd) [1:18-mj-01581-SCY] (Entered: 05/09/2018)
05/09/2018	<u>8</u>		ORDER Setting Conditions of Release by Magistrate Judge Steven C. Yarbrough. (eh) [1:18-mj-01581-SCY] (Entered: 05/09/2018)
05/18/2018	<u>9</u>		TRANSCRIPT of Proceedings as to Douglas D Smith held on May 9, 2018, before Magistrate Judge Steven C. Yarbrough. Court Reporter/Transcriber Exceptional Reporting Services, INC, Telephone number (361) 949-2988. Transcript may be viewed at the Clerk's Office public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. PLEASE TAKE NOTICE that each party now has seven (7) calendar days to file a Notice of Intent to Request Redaction of any personal identifiers from this transcript. If no notice is filed during this seven-day period, the court will assume that redaction of personal data is not

		<p>necessary and will make the transcript electronically available, as is, to the public after 90 days. For additional guidance, PLEASE REVIEW the complete policy, located in the CM/ECF Administrative Procedures Manual at www.nmcourt.fed.us.</p> <p>Notice of Intent to Request Redaction set for 5/25/2018. Redaction Request due 6/8/2018. Redacted Transcript Deadline set for 6/18/2018. Release of Transcript Restriction set for 8/16/2018.(jg) [1:18-mj-01581-SCY] (Entered: 05/18/2018)</p>
05/22/2018	<u>10</u>	MOTION to Continue <i>Grand Jury Presentment</i> by Douglas D Smith. (Jameson, Thomas) [1:18-mj-01581-SCY] (Entered: 05/22/2018)
05/30/2018	<u>11</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith; Time excluded pursuant to 18:3161 by Magistrate Judge Karen B. Molzen. (eh) [1:18-mj-01581-SCY] (Entered: 05/30/2018)
06/12/2018	<u>12</u>	MOTION to Modify Conditions of Release by Douglas D Smith. (Jameson, Thomas) [1:18-mj-01581-SCY] (Entered: 06/12/2018)
06/25/2018	<u>13</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>12</u> MOTION to Modify Conditions of Release (Wilson, Novaline) [1:18-mj-01581-SCY] (Entered: 06/25/2018)
07/02/2018	14	NOTICE OF HEARING as to Douglas D Smith: Bail/Bond Review Hearing set for 7/5/2018 at 02:00 PM in Albuquerque – 480 Chama Courtroom before Magistrate Judge Steven C. Yarbrough. (kd) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] [1:18-mj-01581-SCY] (Entered: 07/02/2018)
07/03/2018	<u>15</u>	NOTICE OF ATTORNEY APPEARANCE: Aric G. Elsenheimer appearing for Douglas D Smith <i>as Co-Counsel</i> (Elsenheimer, Aric) [1:18-mj-01581-SCY] (Entered: 07/03/2018)
07/03/2018		Attorney update in case as to Douglas D Smith. Attorney Aric G. Elsenheimer for Douglas D Smith added. (kd) [1:18-mj-01581-SCY] (Entered: 07/05/2018)
07/05/2018	<u>18</u>	Clerk's Minutes before Magistrate Judge Steven C. Yarbrough: Bail/Bond Review Hearing as to Douglas D Smith held (Recording Info: Liberty – Chama) (kd) [1:18-mj-01581-SCY] (Entered: 07/05/2018)
07/05/2018	<u>19</u>	ORDER by Magistrate Judge Steven C. Yarbrough granting <u>12</u> Motion to Modify Conditions of Release as to Douglas D Smith (1) (kd) [1:18-mj-01581-SCY] (Entered: 07/05/2018)
08/21/2018	<u>20</u>	MOTION to Continue <i>Grand Jury Presentment</i> by Douglas D Smith. (Jameson, Thomas) [1:18-mj-01581-SCY] (Entered: 08/21/2018)
08/22/2018	<u>21</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith; Time excluded pursuant to 18:3161 by Magistrate Judge Jerry H. Ritter (nm) [1:18-mj-01581-SCY] (Entered: 08/22/2018)
09/27/2018	<u>22</u>	NOTICE of Attorney Substitution: Aric G. Elsenheimer substituted for Thomas Jameson (Elsenheimer, Aric) [1:18-mj-01581-SCY] (Entered: 09/27/2018)

			09/27/2018)
09/27/2018			Attorney update in case as to Douglas D Smith. Attorney Thomas B Jameson terminated. (kdh) [1:18-mj-01581-SCY] (Entered: 09/28/2018)
10/23/2018			Judge update in case as to Douglas D Smith. District Judge Judith C. Herrera added. (cl) (Entered: 10/24/2018)
10/23/2018	<u>24</u>		REDACTED INDICTMENT as to Douglas D Smith. (cl) (Entered: 10/24/2018)
10/24/2018	25		NOTICE OF HEARING as to Douglas D Smith: Arraignment set for 11/1/2018 at 09:30 AM in Albuquerque – 320 Rio Grande Courtroom before Magistrate Judge Jerry H. Ritter. (cl) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 10/24/2018)
10/29/2018	26		AMENDED NOTICE OF HEARING as to Douglas D Smith: Arraignment reset for 11/6/2018 at 09:30 AM in Albuquerque – 320 Rio Grande Courtroom before Magistrate Judge Jerry H. Ritter. (eh) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 10/29/2018)
11/06/2018	<u>27</u>		Clerk's Minutes for proceedings held before Magistrate Judge Jerry H. Ritter: Arraignment as to Douglas D Smith (1) Count 1 held on 11/6/2018 (Recording Info: RIO GRANDE @ 9:36 AM) (cl) (Entered: 11/06/2018)
11/06/2018	<u>28</u>		DISCOVERY ORDER as to Douglas D Smith by Magistrate Judge Jerry H. Ritter (cl) (Entered: 11/06/2018)
11/06/2018	<u>29</u>		WAIVER of Personal Appearance at Arraignment and Entry of Plea of Not Guilty by Douglas D Smith (kd) (Entered: 11/06/2018)
11/09/2018	<u>30</u>		NOTICE OF HEARING as to Douglas D Smith: Call of the Calendar set for 11/29/2018 at 01:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera; AND Jury Selection/Trial set for 12/10/2018 at 09:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. (Attachments: # <u>1</u> pretrial deadlines)(id) (Entered: 11/09/2018)
11/14/2018	<u>31</u>		Unopposed MOTION to Continue <i>Jury Trial</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 11/14/2018)
11/20/2018	<u>32</u>		Amended MOTION to Continue <i>Jury Trial</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 11/20/2018)
11/26/2018	<u>33</u>		ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith granting <u>32</u> Amended MOTION to Continue <i>Jury Trial</i> filed by Douglas D Smith by District Judge Judith C. Herrera. Call of the Calendar RESET for 3/7/2019 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Selection/Trial RESET for 3/18/2019 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until January 31, 2019. (Attachments: # <u>1</u> Pretrial Deadlines and Instructions)(gr) (Entered: 11/26/2018)
12/14/2018			

		U.S. Probation and Pretrial Services added as interested party.(Martinez–Spelich, Jeffrey) (Entered: 12/14/2018)
02/21/2019	<u>34</u>	Unopposed MOTION to Continue by Douglas D Smith. (Elsenheimer, Aric) (Entered: 02/21/2019)
02/26/2019	<u>35</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith by District Judge Judith C. Herrera GRANTING: <u>34</u> Unopposed MOTION to Continue filed by Douglas D Smith. Call of the Calendar set for 7/11/2019 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Trial set for 7/22/2019 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera; IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until Thursday, June 20, 2019. (Attachments: # <u>1</u> Pretrial Deadlines & Instructions)(mjr) (Entered: 02/26/2019)
03/19/2019	<u>36</u>	NOTICE of Non–Availability June 4–21, 2019 by Douglas D Smith (Elsenheimer, Aric) (Entered: 03/19/2019)
04/09/2019	<u>37</u>	NOTICE OF ATTORNEY APPEARANCE: Amanda R. Lavin appearing for Douglas D Smith <i>as co–counsel</i> (Lavin, Amanda) (Entered: 04/09/2019)
07/03/2019	<u>38</u>	Unopposed MOTION to Continue <i>Trial Setting of July 22, 2019</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 07/03/2019)
07/03/2019	<u>39</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith by District Judge Judith C. Herrera GRANTING: <u>38</u> Unopposed MOTION to Continue <i>Trial Setting of July 22, 2019</i> filed by Douglas D Smith. Call of the Calendar set for 9/24/2019 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Trial set for 10/21/2019 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera; IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until Tuesday, September 03, 2019. (Attachments: # <u>1</u> Pretrial Deadlines & Instructions)(mjr) (Entered: 07/03/2019)
09/16/2019	<u>40</u>	Unopposed MOTION to Continue <i>Trial Setting of October 21, 2019</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 09/16/2019)
09/18/2019	<u>41</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith by District Judge Judith C. Herrera GRANTING: <u>40</u> Unopposed MOTION to Continue <i>Trial Setting of October 21, 2019</i> filed by Douglas D Smith. Call of the Calendar set for 12/5/2019 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Trial set for 12/16/2019 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera; IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until Thursday, November 14, 2019. (Attachments: # <u>1</u> Pretrial Deadlines & Instructions)(mjr) (Entered: 09/18/2019)
09/26/2019	<u>42</u>	NOTICE OF ATTORNEY APPEARANCE Kyle T Nayback appearing for USA. (Nayback, Kyle) (Entered: 09/26/2019)
11/27/2019	<u>43</u>	Unopposed MOTION to Continue <i>Trial Setting of December 16, 2019</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 11/27/2019)
12/02/2019	<u>44</u>	

		ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith granting <u>43</u> Unopposed MOTION to Continue <i>Trial Setting of December 16, 2019</i> filed by Douglas D Smith by District Judge Judith C. Herrera. Call of the Calendar reset for 3/5/2020 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Selection/Trial reset for 3/16/2020 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until Thursday, February 13, 2020. (Attachments: # <u>1</u> Pretrial Instructions and Deadlines)(gr) Modified on 12/3/2019 (emr). (Entered: 12/02/2019)
02/20/2020	<u>45</u>	Unopposed MOTION to Continue <i>Trial Setting of March 16, 2020</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 02/20/2020)
02/21/2020	<u>46</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith by District Judge Judith C. Herrera GRANTING: <u>45</u> Unopposed MOTION to Continue <i>Trial Setting of March 16, 2020</i> filed by Douglas D Smith. Call of the Calendar set for 5/7/2020 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Trial set for 5/18/2020 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera; IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until Thursday, April 16, 2020. (Attachments: # <u>1</u> Pretrial Deadlines & Instructions)(mjr) (Entered: 02/21/2020)
04/03/2020	<u>47</u>	MOTION to Dismiss <i>for Lack of Federal Jurisdiction</i> by Douglas D Smith. (Attachments: # <u>1</u> Exhibit Alfred Lucero Land Entry Files, # <u>2</u> Exhibit SER Patent, # <u>3</u> Exhibit Gutierrez Order, # <u>4</u> Exhibit Pueblo Boundaries, # <u>5</u> Exhibit Rio Arriba County Clerk, # <u>6</u> Exhibit Property Record)(Elsenheimer, Aric) (Entered: 04/03/2020)
04/16/2020	<u>48</u>	Opposed MOTION to Exclude <i>Expert Witness Testimony of Theodore Chavez</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 04/16/2020)
04/16/2020	<u>49</u>	Opposed MOTION to Suppress <i>Evidence</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 04/16/2020)
04/16/2020	<u>50</u>	Opposed MOTION to Dismiss <i>Under Rule 12(b) for Insufficient Evidence</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 04/16/2020)
04/16/2020	<u>51</u>	Opposed MOTION to Produce <i>Grand Jury Transcripts</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 04/16/2020)
04/16/2020	<u>53</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>47</u> MOTION to Dismiss <i>for Lack of Federal Jurisdiction</i> (Attachments: # <u>1</u> Exhibit Land Status)(Wilson, Novaline) (Entered: 04/16/2020)
04/24/2020	<u>55</u>	MOTION for Extension of Time to File Response/Reply <i>and Extension of Time to File Motions In Limine</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 04/24/2020)
04/27/2020	56	ORDER by District Judge Judith C. Herrera granting <u>55</u> Motion for Extension of Time to File Response as to Douglas D Smith (1); Response due on or before May 11, 2020; Motions in Limine due on or before May 14, 2020. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (emr)

		(Entered: 04/27/2020)
04/27/2020	<u>57</u>	"FILED IN ERROR" Will refile. MOTION in Limine <i>Defendant's Omnibus</i> by Douglas D Smith. (Fooks, Devon) Modified text on 4/27/2020 (bap). (Entered: 04/27/2020)
04/27/2020	<u>58</u>	MOTION in Limine <i>Defendant's Omnibus</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 04/27/2020)
04/29/2020	<u>59</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith by District Judge Judith C. Herrera. Call of the Calendar set for 6/4/2020 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Trial set for 6/15/2020 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera; IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until Thursday, May 14, 2020. (Attachments: # <u>1</u> Pretrial Deadlines & Instructions)(mjr) (Entered: 04/29/2020)
04/30/2020	<u>60</u>	REPLY TO RESPONSE to Motion by Douglas D Smith re <u>47</u> MOTION to Dismiss <i>for Lack of Federal Jurisdiction</i> (Elsenheimer, Aric) (Entered: 04/30/2020)
04/30/2020	<u>61</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>50</u> Opposed MOTION to Dismiss <i>Under Rule 12(b) for Insufficient Evidence</i> (Attachments: # <u>1</u> Exhibit Diagrams)(Wilson, Novaline) (Entered: 04/30/2020)
05/06/2020	<u>62</u>	MOTION in Limine <i>First Motion in Limine</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 05/06/2020)
05/06/2020	<u>63</u>	MOTION in Limine <i>for Lafler–Frye Hearing</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 05/06/2020)
05/06/2020	<u>64</u>	MOTION in Limine <i>to Prohibit Discussion of Sentencing or Punishment at Trial</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 05/06/2020)
05/06/2020	<u>65</u>	MOTION in Limine <i>for Pre–Trial Determination of Indian Country Land Status</i> by USA as to Douglas D Smith. (Attachments: # <u>1</u> Exhibit Land Status Cert)(Wilson, Novaline) (Entered: 05/06/2020)
05/06/2020	<u>67</u>	NOTICE of Intent to Introduce Evidence Pursuant to Fed. R. Evid. 404(b) by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 05/06/2020)
05/06/2020	<u>68</u>	MOTION in Limine <i>to Exclude Self–Defense, Defense of Another, or Justification by Preventing Commission of a Felony</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 05/06/2020)
05/11/2020	<u>69</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>51</u> Opposed MOTION to Produce <i>Grand Jury Transcripts</i> (Wilson, Novaline) (Entered: 05/11/2020)
05/11/2020	<u>70</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>48</u> Opposed MOTION to Exclude <i>Expert Witness Testimony of Theodore Chavez</i> (Wilson, Novaline) (Entered: 05/11/2020)
05/11/2020	<u>71</u>	

		RESPONSE to Motion by USA as to Douglas D Smith re <u>58</u> MOTION in Limine <i>Defendant's Omnibus</i> (Attachments: # <u>1</u> Exhibit One, # <u>2</u> Exhibit Two, # <u>3</u> Exhibit Three)(Nayback, Kyle) (Entered: 05/11/2020)
05/11/2020	<u>72</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>49</u> Opposed MOTION to Suppress <i>Evidence</i> (Attachments: # <u>1</u> Exhibit SW & Affidavit, # <u>2</u> Exhibit Chavez Material)(Wilson, Novaline) (Entered: 05/11/2020)
05/13/2020	<u>73</u>	MOTION in Limine <i>to Admit Use of Demonstrative Exhibit During Trial</i> by USA as to Douglas D Smith. (Attachments: # <u>1</u> Exhibit Photos of Model)(Nayback, Kyle) (Entered: 05/13/2020)
05/13/2020	<u>74</u>	MOTION in Limine <i>to Permit Evidence, Impeachment, and Argument Regarding Defendant's Failure to Claim Self-Defense or Defense of Others at the Crime Scene</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 05/13/2020)
05/13/2020	<u>75</u>	MOTION in Limine <i>to Prohibit Evidence and Argument About the Quality of the Investigation</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 05/13/2020)
05/13/2020	<u>76</u>	Unopposed MOTION to Continue <i>Trial Setting of June 15, 2020</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 05/13/2020)
05/14/2020	<u>77</u>	NOTICE of Intent to Offer Defendant's Recorded Statements in its Case—in—Chief by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 05/14/2020)
05/26/2020	<u>78</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith by District Judge Judith C. Herrera GRANTING: <u>76</u> Unopposed MOTION to Continue <i>Trial Setting of June 15, 2020</i> filed by Douglas D Smith. Call of the Calendar set for 9/10/2020 at 1:30 PM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera. Jury Trial set for 9/21/2020 at 9:00 AM in Albuquerque – 420 Mimbres Courtroom before District Judge Judith C. Herrera; IT IS FURTHER ORDERED that the pretrial motion deadline is hereby extended until Thursday, August 20, 2020. (Attachments: # <u>1</u> Pretrial Deadlines & Instructions)(mjr) (Entered: 05/26/2020)
05/26/2020	79	NOTICE – responses currently due shall be filed on or before July 15, 2020 with replies due 2 weeks later; replies currently due shall be filed on or before July 15, 2020. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (emr) (Entered: 05/26/2020)
07/09/2020	<u>80</u>	Unopposed MOTION for Extension of Time to File Response/Reply (<i>from July 15, 2020 to July 29, 2020</i>) by Douglas D Smith. (Elsenheimer, Aric) (Entered: 07/09/2020)
07/14/2020	81	ORDER by District Judge Judith C. Herrera granting <u>80</u> Motion for Extension of Time to File Response/Reply as to Douglas D Smith (1); Response/Reply due on or before July 29, 2020. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (emr) (Entered: 07/14/2020)
07/29/2020	<u>82</u>	REPLY TO RESPONSE to Motion by Douglas D Smith re <u>50</u> Opposed MOTION to Dismiss <i>Under Rule 12(b) for Insufficient Evidence Govt's</i>

			<i>Response (Doc. 61) (Elsenheimer, Aric) (Entered: 07/29/2020)</i>
07/29/2020	<u>83</u>		REPLY TO RESPONSE to Motion by Douglas D Smith re <u>51</u> Opposed MOTION to Produce <i>Grand Jury Transcripts Govt's Response (Doc. 69)</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>84</u>		REPLY TO RESPONSE to Motion by Douglas D Smith re <u>48</u> Opposed MOTION to Exclude <i>Expert Witness Testimony of Theodore Chavez Govt's Response (Doc. 70)</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>85</u>		REPLY TO RESPONSE to Motion by Douglas D Smith re <u>58</u> MOTION in <i>Limine Defendant's Omnibus (Govt's Response (Doc. 71))</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>86</u>		RESPONSE to Motion by Douglas D Smith re <u>74</u> MOTION in <i>Limine to Permit Evidence, Impeachment, and Argument Regarding Defendant's Failure to Claim Self-Defense or Defense of Others at the Crime Scene</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>87</u>		RESPONSE to Motion by Douglas D Smith re <u>66</u> MOTION in <i>Limine to Exclude Self-Serving, Inadmissible Hearsay, and Irrelevant, Prejudicial Statements</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>88</u>		RESPONSE to Motion by Douglas D Smith re <u>68</u> MOTION in <i>Limine to Exclude Self-Defense, Defense of Another, or Justification by Preventing Commission of a Felony</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>89</u>		RESPONSE to Motion by Douglas D Smith re <u>75</u> MOTION in <i>Limine to Prohibit Evidence and Argument About the Quality of the Investigation</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>90</u>		RESPONSE to Motion by Douglas D Smith re <u>65</u> MOTION in <i>Limine for Pre-Trial Determination of Indian Country Land Status</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>91</u>		RESPONSE to Motion by Douglas D Smith re <u>62</u> MOTION in <i>Limine First Motion in Limine</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>92</u>		RESPONSE to Motion by Douglas D Smith re <u>63</u> MOTION in <i>Limine for Lafler-Frye Hearing</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>93</u>		RESPONSE to Motion by Douglas D Smith re <u>64</u> MOTION in <i>Limine to Prohibit Discussion of Sentencing or Punishment at Trial</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>94</u>		RESPONSE by Douglas D Smith re <u>77</u> Notice (Other) <i>To Offer Defendant's Recorded Statements</i> (Elsenheimer, Aric) (Entered: 07/29/2020)
07/29/2020	<u>95</u>		Unopposed MOTION for Extension of Time to File Response/Reply as to <u>72</u> Response in Opposition, <u>73</u> MOTION in <i>Limine to Admit Use of Demonstrative Exhibit During Trial</i> , <u>67</u> Notice (Other) (<i>until August 7, 2020 for Defendant and August 21, 2020 for the government</i>) by Douglas D Smith. (Lavin, Amanda) (Entered: 07/29/2020)
07/30/2020	96		ORDER by District Judge Judith C. Herrera granting <u>95</u> Motion for Extension of Time to File Response/Reply as to Douglas D Smith (1). [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (emr)

		(Entered: 07/30/2020)
08/06/2020	<u>97</u>	NOTICE of Filing Supplemental Exhibits to United States' Response to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction by USA as to Douglas D Smith re <u>53</u> Response in Opposition (Attachments: # <u>1</u> Exhibit Boundary Map, # <u>2</u> Exhibit Plat Map, # <u>3</u> Exhibit Letter from Governor)(Wilson, Novaline) (Entered: 08/06/2020)
08/07/2020	<u>98</u>	<p>NOTICE OF HEARING ON MOTION in case as to Douglas D Smith: <u>47</u> MOTION to Dismiss <i>for Lack of Federal Jurisdiction</i> set for 8/25/2020 at 10:00 AM in Remote via Zoom before District Judge Judith C. Herrera. (emr)</p> <p>NOTE:</p> <p>1. This proceeding will be held via Zoom Video/Web Conferencing with all participants appearing remotely; the Zoom ID and Passcode will be provided separately to the participants email address of record.</p> <p>2. Participants should connect to the proceeding 15 minutes prior its scheduled start time to allow time for trouble–shooting of any connectivity issues.</p> <p>3. To ensure the record is of the best quality participants are encouraged to utilize a headset to reduce static and background noise; if not using a headset participants must ensure the audio feed at their location is muted when not speaking.</p> <p>*** REMINDER: Recording or broadcasting of this hearing is prohibited. ***</p> <p>[THIS IS A TEXT–ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.]</p> <p>(Entered: 08/07/2020)</p>
08/07/2020	<u>99</u>	RESPONSE by Douglas D Smith re <u>67</u> Notice (Other) of Intent To Introduce Evidence Pursuant to Federal Rule of Evidence 404(b) (Lavin, Amanda) (Entered: 08/07/2020)
08/07/2020	<u>100</u>	REPLY TO RESPONSE to Motion by USA as to Douglas D Smith re <u>68</u> MOTION in Limine to Exclude Self–Defense, Defense of Another, or Justification by Preventing Commission of a Felony (Nayback, Kyle) (Entered: 08/07/2020)
08/07/2020	<u>101</u>	REPLY TO RESPONSE to Motion by USA as to Douglas D Smith re <u>75</u> MOTION in Limine to Prohibit Evidence and Argument About the Quality of the Investigation (Wilson, Novaline) (Entered: 08/07/2020)
08/07/2020	<u>102</u>	REPLY TO RESPONSE to Motion by USA as to Douglas D Smith re <u>64</u> MOTION in Limine to Prohibit Discussion of Sentencing or Punishment at Trial (Wilson, Novaline) (Entered: 08/07/2020)
08/07/2020	<u>103</u>	RESPONSE to Motion by Douglas D Smith re <u>73</u> MOTION in Limine to Admit Use of Demonstrative Exhibit During Trial (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, #

		<u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Lavin, Amanda) (Entered: 08/07/2020)
08/07/2020	<u>104</u>	REPLY TO RESPONSE to Motion by USA as to Douglas D Smith re <u>65</u> MOTION in Limine for Pre-Trial Determination of Indian Country Land Status (Wilson, Novaline) (Entered: 08/07/2020)
08/07/2020	<u>105</u>	REPLY TO RESPONSE to Motion by Douglas D Smith re <u>49</u> Opposed MOTION to Suppress Evidence (Lavin, Amanda) (Entered: 08/07/2020)
08/12/2020	<u>106</u>	REPLY TO RESPONSE to Motion by USA as to Douglas D Smith re <u>66</u> MOTION in Limine to Exclude Self-Serving, Inadmissible Hearsay, and Irrelevant, Prejudicial Statements (Nayback, Kyle) (Entered: 08/12/2020)
08/20/2020	<u>107</u>	REPLY TO RESPONSE to Motion by USA as to Douglas D Smith re <u>73</u> MOTION in Limine to Admit Use of Demonstrative Exhibit During Trial (Wilson, Novaline) (Entered: 08/20/2020)
08/20/2020	<u>108</u>	REPLY by USA as to Douglas D Smith re <u>99</u> Response (Wilson, Novaline) (Entered: 08/20/2020)
08/25/2020	<u>109</u>	Clerk's Minutes for proceedings held before District Judge Judith C. Herrera: Motion Hearing as to Douglas D Smith held on 8/25/2020 re <u>47</u> MOTION to Dismiss for Lack of Federal Jurisdiction filed by Douglas D Smith (Court Reporter: P. Baca) (mjr) (Entered: 08/25/2020)
08/27/2020	<u>110</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS ORDERED that Defendant's Motion to Dismiss for Lack of Federal Jurisdiction <u>47</u> is DENIED. (mjr) (Entered: 08/27/2020)
08/27/2020	<u>111</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS ORDERED that the United States' Motion in Limine for Pre-Trial Determination of Indian Country Land Status <u>65</u> is GRANTED. (mjr) (Entered: 08/27/2020)
09/01/2020	<u>113</u>	Unopposed MOTION to Extend (other) Deadline to File Jury Instructions by Douglas D Smith. (Elsenheimer, Aric) (Entered: 09/01/2020)
09/02/2020	<u>114</u>	WAIVER of Personal Presence at Hearing by Douglas D Smith (Elsenheimer, Aric) (Entered: 09/02/2020)
09/02/2020	<u>115</u>	Proposed Jury Instructions by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 09/02/2020)
09/09/2020	<u>116</u>	ORDER vacating Call of the Calendar as to Douglas D Smith by District Judge Judith C. Herrera. A Status Conference will be scheduled at a later date.THIS IS A TEXT ONLY ENTRY. NO OTHER DOCUMENTS ARE ATTACHED. (emr) (Entered: 09/09/2020)
09/10/2020	<u>118</u>	ORDER TO CONTINUE – Ends of Justice as to Douglas D Smith by District Judge Judith C. Herrera; IT IS ORDERED that the Call of Calendar hearing of September 10, 2020 and the Jury Selection/Trial of September 21, 2020 and corresponding trial deadlines are VACATED. (mjr) (Entered: 09/10/2020)
09/14/2020	<u>119</u>	WITNESS LIST by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 09/14/2020)
09/14/2020	<u>120</u>	

		EXHIBIT LIST by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 09/14/2020)
09/14/2020	<u>121</u>	Proposed Voir Dire by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 09/14/2020)
09/23/2020	<u>122</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS ORDERED that Defendant's Motion to Exclude Expert Witness Testimony of Theodore Chavez <u>48</u> is DENIED based on Rule 16 concerns, but the Court will RESERVE RULING on the Daubert issues and hold a hearing on Rule 702 issues. (mjr) (Entered: 09/23/2020)
09/23/2020	<u>123</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS THEREFORE ORDERED that Defendant's Motion to Suppress Evidence <u>49</u> is DENIED. (mjr) (Entered: 09/23/2020)
09/23/2020	<u>124</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS ORDERED that Defendant's Motion to Dismiss under Rule 12(b) for Insufficient Evidence <u>50</u> and Defendant's Motion for Production of Grand Jury Transcripts <u>51</u> are DENIED. (mjr) (Entered: 09/23/2020)
09/29/2020	<u>126</u>	<p>TRANSCRIPT of Proceedings, Motion Hearing, as to Douglas D Smith held on AUGUST 25, 2020, before District Judge Judith C. Herrera. Court Reporter/Transcriber Paul Baca, Telephone number (505) 843-9241. Transcript may be viewed at the Clerk's Office public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p>PLEASE TAKE NOTICE that each party now has seven (7) calendar days to file a Notice of Intent to Request Redaction of any personal identifiers from this transcript. If no notice is filed during this seven-day period, the court will assume that redaction of personal data is not necessary and will make the transcript electronically available, as is, to the public after 90 days. For additional guidance, PLEASE REVIEW the complete policy, located in the CM/ECF Administrative Procedures Manual at https://www.nmd.uscourts.gov.</p> <p>Notice of Intent to Request Redaction set for 10/6/2020. Redaction Request due 10/20/2020. Redacted Transcript Deadline set for 10/30/2020. Release of Transcript Restriction set for 12/28/2020.(pb) (Entered: 09/29/2020)</p>
10/09/2020	127	NOTICE OF HEARING ON MOTIONS in case as to Douglas D Smith: <u>48</u> Motion to Exclude Expert Witness Testimony; <u>66</u> Motion in Limine to Exclude Self-Serving, Inadmissible Hearsay, and Irrelevant, Prejudicial Statements; <u>67</u> Notice of Intent to Introduce Evidence Pursuant to Fed. R. Evid. 404(b); <u>68</u> MOTION in Limine to Exclude Self-Defense, Defense of Another, or Justification by Preventing Commission of a Felony, <u>73</u> MOTION in Limine to Admit Use of Demonstrative Exhibit During Trial and <u>77</u> United States' Notice of Intent to Offer Defendant's Recorded Statements in its Case-in-Chief set for 11/5/2020 at 09:00 AM in Remote via Zoom before District Judge Judith C. Herrera. (emr)

		<p>NOTE:</p> <p>1. This proceeding will be held via Zoom Video/Web Conferencing with all participants appearing remotely; the Zoom ID and Passcode will be provided separately to the participants email address of record.</p> <p>2. Participants should connect to the proceeding 15 minutes prior its scheduled start time to allow time for trouble-shooting of any connectivity issues.</p> <p>3. To ensure the record is of the best quality participants are encouraged to utilize a headset to reduce static and background noise; if not using a headset participants must ensure the audio feed at their location is muted when not speaking.</p> <p>*** REMINDER: Recording or broadcasting of this hearing is prohibited. ***</p> <p>[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 10/09/2020)</p>
10/29/2020	<u>128</u>	<p>NOTICE of Filing Exhibits for November 5, 2020 Hearing Regarding Daubert and Rule 702 Issues on Denial of Defendant's Motion to Exclude Expert Witness Testimony of Theodore Chavez (Doc. 48) by USA as to Douglas D Smith (Attachments: # <u>1</u> Exhibit Chavez CV, # <u>2</u> Exhibit PPT re Trajectory Analysis, # <u>3</u> Exhibit FBI Diagram re Lab Response, # <u>4</u> Exhibit LSRT Info, # <u>5</u> Exhibit Chavez Lab Report, # <u>6</u> Exhibit Trajectory Graphic)(Wilson, Novaline) (Entered: 10/29/2020)</p>
10/29/2020	<u>129</u>	<p>NOTICE of Filing Superseding Exhibits in Support of its Motion in Limine to Admit Use of Demonstrative Exhibit at Trial (Doc. 73) by USA as to Douglas D Smith re <u>73</u> MOTION in Limine to Admit Use of Demonstrative Exhibit During Trial (Attachments: # <u>1</u> Exhibit Photo-Top of 3D Model, # <u>2</u> Exhibit Photo-Side of 3D Model, # <u>3</u> Exhibit Photo-Closeup of 3D Model)(Wilson, Novaline) (Entered: 10/29/2020)</p>
11/05/2020	<u>131</u>	<p>Clerk's Minutes for proceedings held before District Judge Judith C. Herrera: Motion Hearing as to Douglas D Smith held on 11/5/2020 re <u>68</u> MOTION in Limine to Exclude Self-Defense, Defense of Another, or Justification by Preventing Commission of a Felony filed by USA, <u>48</u> Opposed MOTION to Exclude Expert Witness Testimony of Theodore Chavez filed by Douglas D Smith, <u>73</u> MOTION in Limine to Admit Use of Demonstrative Exhibit During Trial filed by USA, and <u>66</u> MOTION in Limine to Exclude Self-Serving, Inadmissible Hearsay, and Irrelevant, Prejudicial Statements filed by USA. (Court Reporter: Paul Baca) (gr) (Entered: 11/05/2020)</p>
11/19/2020	134	<p>ORDER by District Judge Judith C. Herrera granting <u>133</u> Motion for Extension of Time to File Response as to Douglas D Smith (1). [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (emr) (Entered: 11/19/2020)</p>
12/16/2020	<u>136</u>	<p>MOTION for Order For Statewide Jury Pool and Supplemental Jury Questionnaire by Douglas D Smith. (Attachments: # <u>1</u> Exhibit A –</p>

		Supplemental Juror Questionnaire, # <u>2</u> Exhibit B – Santa Fe New Mexican 5/5/2018, # <u>3</u> Exhibit C – Santa Fe New Mexican 5/6/2018, # <u>4</u> Exhibit D – Santa Fe New Mexican 5/8/2018, # <u>5</u> Exhibit E – Albuquerque Journal 5/7/2018, # <u>6</u> Exhibit F – Rio Grande Sun 5/10/2018, # <u>7</u> Exhibit G – KRQE News 13 5/6/2018, # <u>8</u> Exhibit H – KKOB 96.3 New Radio 5/9/2018, # <u>9</u> Exhibit I – KOB News 4 5/8/2018, # <u>10</u> Exhibit J – KOAT New 7 5/8/2018)(Elsenheimer, Aric) (Entered: 12/16/2020)
12/16/2020	<u>137</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>136</u> MOTION for Order <i>For Statewide Jury Pool and Supplemental Jury Questionnaire</i> by USA as to Douglas D Smith. (Wilson, Novaline) (Entered: 12/16/2020)
12/17/2020	<u>138</u>	ORDER by District Judge Judith C. Herrera granting <u>137</u> Motion for Extension of Time to File Response. (mjr) (Entered: 12/17/2020)
12/18/2020	<u>139</u>	<p>TRANSCRIPT of Proceedings as to Douglas D Smith held on NOVEMBER 5, 2020, before District Judge Judith C. Herrera. Court Reporter/Transcriber Paul Baca, Telephone number (505) 843-9241. Transcript may be viewed at the Clerk's Office public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p>PLEASE TAKE NOTICE that each party now has seven (7) calendar days to file a Notice of Intent to Request Redaction of any personal identifiers from this transcript. If no notice is filed during this seven-day period, the court will assume that redaction of personal data is not necessary and will make the transcript electronically available, as is, to the public after 90 days. For additional guidance, PLEASE REVIEW the complete policy, located in the CM/ECF Administrative Procedures Manual at https://www.nmd.uscourts.gov.</p> <p>Notice of Intent to Request Redaction set for 12/28/2020. Redaction Request due 1/8/2021. Redacted Transcript Deadline set for 1/19/2021. Release of Transcript Restriction set for 3/18/2021.(pb) (Entered: 12/18/2020)</p>
01/15/2021	<u>140</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>136</u> MOTION for Order <i>For Statewide Jury Pool and Supplemental Jury Questionnaire</i> (Wilson, Novaline) (Entered: 01/15/2021)
02/24/2021	<u>142</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS ORDERED that Defendant's Motion for Statewide Jury Pool and Supplemental Jury Questionnaire <u>136</u> is DENIED. (mjr) (Entered: 02/24/2021)
02/26/2021	143	NOTICE OF HEARING as to Douglas D Smith: United States Notice of Intent to Offer Defendants Recorded Statements in its Case-in-Chief [Doc. 77] and United States Sealed Motion in Limine to Exclude Self-Serving, Inadmissible Hearsay, and Irrelevant, Prejudicial Statements [Doc. 66] specifically whether Defendants statement in the 911 call is admissible under the excited utterance exception set for 3/16/2021 at 09:00 AM in Remote via Zoom before District Judge Judith C. Herrera. (emr)

		<p>NOTE:</p> <p>1. This proceeding will be held via Zoom Video/Web Conferencing with all participants appearing remotely; the Zoom ID and Passcode will be provided separately to the participants email address of record.</p> <p>2. Participants should connect to the proceeding 15 minutes prior its scheduled start time to allow time for trouble-shooting of any connectivity issues.</p> <p>3. To ensure the record is of the best quality participants are encouraged to utilize a headset to reduce static and background noise; if not using a headset participants must ensure the audio feed at their location is muted when not speaking.</p> <p>*** REMINDER: Recording or broadcasting of this hearing is prohibited. ***</p> <p>[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 02/26/2021)</p>
03/16/2021	<u>144</u>	<p>Clerk's Minutes for proceedings held before District Judge Judith C. Herrera: Motion Hearing held on 3/16/2021 re <u>66</u> MOTION in <i>Limine to Exclude Self-Serving, Inadmissible Hearsay, and Irrelevant, Prejudicial Statements</i> filed by USA. (Court Reporter: P. Baca) (mjr) (Entered: 03/16/2021)</p>
03/23/2021	<u>145</u>	<p>NOTICE of Lodging by Douglas D Smith (Elsenheimer, Aric) (Entered: 03/23/2021)</p>
04/07/2021	146	<p>NOTICE OF HEARING as to Douglas D Smith: Status Conference set for 5/13/2021 at 10:30 AM in Remote via Zoom before District Judge Judith C. Herrera. (emr)</p> <p>NOTE:</p> <p>1. This proceeding will be held via Zoom Video/Web Conferencing with all participants appearing remotely; the Zoom ID and Passcode will be provided separately to the participants email address of record.</p> <p>2. Participants should connect to the proceeding 15 minutes prior its scheduled start time to allow time for trouble-shooting of any connectivity issues.</p> <p>3. To ensure the record is of the best quality participants are encouraged to utilize a headset to reduce static and background noise; if not using a headset participants must ensure the audio feed at their location is muted when not speaking.</p> <p>*** REMINDER: Recording or broadcasting of this hearing is prohibited. ***</p>

			[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 04/07/2021)
04/15/2021	<u>147</u>		WAIVER of Personal Presence at Hearing by Douglas D Smith (Elsenheimer, Aric) (Entered: 04/15/2021)
05/13/2021	<u>149</u>		Clerk's Minutes for proceedings held before District Judge Judith C. Herrera: Call of the Calendar as to Douglas D Smith held on 5/13/2021. (Court Reporter: P. Baca) (mjr) (Entered: 05/13/2021)
05/13/2021	<u>150</u>		WITNESS LIST by Douglas D Smith (Elsenheimer, Aric) (Entered: 05/13/2021)
05/13/2021	<u>151</u>		NOTICE OF HEARING as to Douglas D Smith: Jury Selection/Jury Trial set for 6/14/2021 at 09:00 AM in Albuquerque – 320 Rio Grande Courtroom before District Judge Judith C. Herrera. (Attachments: # <u>1</u> Supplement)(emr) (Entered: 05/13/2021)
05/17/2021	<u>152</u>		Proposed Jury Instructions by Douglas D Smith (Elsenheimer, Aric) (Entered: 05/17/2021)
05/17/2021	<u>153</u>		EXHIBIT LIST by Douglas D Smith (Elsenheimer, Aric) (Entered: 05/17/2021)
05/17/2021	<u>154</u>		Proposed Voir Dire by Douglas D Smith (Elsenheimer, Aric) (Entered: 05/17/2021)
05/20/2021	<u>156</u>		EXHIBIT LIST by Douglas D Smith (Elsenheimer, Aric) (Entered: 05/20/2021)
05/26/2021	<u>160</u>		ORDER by District Judge Judith C. Herrera; IT IS ORDERED that the parties may submit in writing any information or evidence regarding the admissibility of the 9–1–1 call to the Court on or before JUNE 2, 2021. (mjr) (Entered: 05/26/2021)
05/27/2021	<u>161</u>		RESPONSE by USA as to Douglas D Smith <i>proposed Voir Dire</i> (Nayback, Kyle) (Entered: 05/27/2021)
05/28/2021	<u>162</u>		Proposed Jury Instructions by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 05/28/2021)
05/28/2021	<u>163</u>		Opposed MOTION for Order <i>to permit evidence of Jane Doe's intoxication</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 05/28/2021)
06/02/2021	<u>166</u>		RESPONSE by USA as to Douglas D Smith re <u>160</u> Order (Wilson, Novaline) (Entered: 06/02/2021)
06/02/2021	<u>167</u>		NOTICE of United States' Objections to Defendant's Proposed Jury Instructions (Doc. 152) by USA as to Douglas D Smith re <u>152</u> Proposed Jury Instructions (Wilson, Novaline) (Entered: 06/02/2021)
06/02/2021	<u>168</u>		RESPONSE by Douglas D Smith re <u>160</u> Order (Elsenheimer, Aric) (Entered: 06/02/2021)
06/03/2021	<u>169</u>		RESPONSE to Motion by USA as to Douglas D Smith re <u>163</u> Opposed

		MOTION for Order <i>to permit evidence of Jane Doe's intoxication</i> (Nayback, Kyle) (Entered: 06/03/2021)
06/04/2021	<u>171</u>	RESPONSE by Douglas D Smith re <u>167</u> Notice (Other) <i>Government's Objections to Mr. Smith's Jury Instructions</i> (Elsenheimer, Aric) (Entered: 06/04/2021)
06/07/2021	<u>173</u>	MOTION for Disclosure of <i>Exculpatory Material</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 06/07/2021)
06/07/2021	174	MINUTE ORDER as to Douglas D Smith by District Judge Judith C. Herrera: Government's response to Defendant's MOTION for Disclosure of Exculpatory Material <u>173</u> is due by Wednesday, June 9, 2021. (emr) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 06/07/2021)
06/07/2021	<u>176</u>	EXHIBIT LIST by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 06/07/2021)
06/07/2021	<u>177</u>	WITNESS LIST by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 06/07/2021)
06/07/2021	<u>179</u>	REPLY by Douglas D Smith re <u>161</u> Response <i>Government's Response to Defendant's Proposed Voir Dire</i> (Elsenheimer, Aric) (Entered: 06/07/2021)
06/07/2021	<u>180</u>	EXHIBIT LIST by Douglas D Smith (Elsenheimer, Aric) (Entered: 06/07/2021)
06/07/2021	<u>181</u>	NOTICE <i>Objections to Government's Exhibits</i> by Douglas D Smith (Elsenheimer, Aric) (Entered: 06/07/2021)
06/07/2021	<u>182</u>	Proposed Voir Dire by Douglas D Smith (Elsenheimer, Aric) (Entered: 06/07/2021)
06/07/2021	<u>183</u>	WITNESS LIST by Douglas D Smith (Elsenheimer, Aric) (Entered: 06/07/2021)
06/09/2021	<u>184</u>	RESPONSE in Opposition by USA as to Douglas D Smith re <u>173</u> MOTION for Disclosure of <i>Exculpatory Material</i> (Wilson, Novaline) (Entered: 06/09/2021)
06/09/2021	<u>185</u>	RESPONSE by USA as to Douglas D Smith <i>United States Objections to Defendants Second Amended Exhibit List (Doc. 180) and Amended Witness List (Doc. 183) and Motion to Exclude Inadmissible Exhibits and Irrelevant Testimony</i> (Wilson, Novaline) (Entered: 06/09/2021)
06/10/2021	<u>186</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS ORDERED that filed Mr. Smith's motion to permit evidence of Jane Doe's intoxication <u>163</u> is DENIED. (mjr) (Entered: 06/10/2021)
06/10/2021	<u>191</u>	RESPONSE by USA as to Douglas D Smith re <u>182</u> Proposed Voir Dire (Nayback, Kyle) (Entered: 06/10/2021)
06/11/2021	<u>193</u>	REPLY by Douglas D Smith re <u>191</u> Response (Elsenheimer, Aric) (Entered: 06/11/2021)
06/11/2021	<u>194</u>	**FILED IN ERROR** NOTICE <i>Objection to governments exhibit 35</i> by

		Douglas D Smith (Elsenheimer, Aric) Modified as per Rowan assistant to attorney on 6/11/2021 (jjs). (Entered: 06/11/2021)
06/11/2021	<u>195</u>	NOTICE <i>Objection to governments exhibit 35</i> by Douglas D Smith (Elsenheimer, Aric) (Entered: 06/11/2021)
06/11/2021	<u>196</u>	NOTICE <i>of Response to Defendant's Objection to Government's Exhibit 35</i> by USA as to Douglas D Smith re <u>195</u> Notice (Other) (Wilson, Novaline) (Entered: 06/11/2021)
06/13/2021	<u>197</u>	EXHIBIT LIST by Douglas D Smith (Elsenheimer, Aric) (Entered: 06/13/2021)
06/14/2021	198	NOTICE OF HEARING WITH VIDEO STREAMING as to Douglas D Smith: Jury Selection/Jury Trial set for 6/14/2021 at 09:00 AM thru 6/17/2021 at 09:00 AM in Albuquerque – 320 Rio Grande Courtroom before District Judge Judith C. Herrera. (emr) This hearing will be available for remote viewing by video stream. Please visit the Court's website at www.nmd.uscourts.gov for information and instructions to connect. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 06/14/2021)
06/14/2021	<u>200</u>	Clerk's Minutes for proceedings held before District Judge Judith C. Herrera: Jury Trial begins on 6/14/2021 and concludes on 6/18/2021. (Court Reporter: P. Baca) (Attachments: # <u>1</u> Exhibit and Witness List) (mjr) (Entered: 06/22/2021)
06/15/2021	<u>199</u>	MEMORANDUM OPINION AND ORDER by District Judge Judith C. Herrera; IT IS ORDERED that Defendant's Motion for Disclosure of Exculpatory Material <u>173</u> is DENIED. (mjr) (Entered: 06/15/2021)
06/17/2021	<u>201</u>	Court's Jury Instructions as to Douglas D Smith by District Judge Judith C. Herrera (mjr) (Entered: 06/22/2021)
06/18/2021	<u>203</u>	Jury Note as to Douglas D Smith (mjr) (Entered: 06/22/2021)
06/18/2021	<u>205</u>	JURY VERDICT (mjr) (Entered: 06/22/2021)
06/23/2021	<u>206</u>	RETURN OF EXHIBITS to counsel (mjr) (Entered: 06/24/2021)
10/21/2021	<u>210</u>	Unopposed MOTION to Extend (other) <i>Deadline to File Objections to Presentence Report and Sentencing Memorandum</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 10/21/2021)
10/21/2021	211	ORDER by District Judge Judith C. Herrera granting <u>210</u> Motion to Extend Deadline to File Objections to Presentence Report and Sentencing Memorandum as to Douglas D Smith (1). [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (emr) (Entered: 10/21/2021)
11/02/2021	<u>212</u>	Unopposed MOTION for Extension of Time to File <i>Objections to Presentence Report and Sentencing Memorandum</i> by Douglas D Smith. (Elsenheimer, Aric) (Entered: 11/02/2021)
11/02/2021	213	ORDER by District Judge Judith C. Herrera granting <u>212</u> Motion for Extension of Time to File Objections to PSR as to Douglas D Smith (1).

			[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (emr) (Entered: 11/02/2021)
06/09/2022	214		NOTICE OF HEARING as to Douglas D Smith: Sentencing set for 9/15/2022 at 09:30 AM in Albuquerque – 340 Pecos Courtroom before District Judge Judith C. Herrera. Briefing due on or before August 29, 2022.(emr) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 06/09/2022)
08/16/2022	<u>215</u>		OBJECTION TO PRESENTENCE INVESTIGATION REPORT by Douglas D Smith (Elsenheimer, Aric) (Entered: 08/16/2022)
08/29/2022	<u>216</u>		SENTENCING MEMORANDUM by USA as to Douglas D Smith (Wilson, Novaline) (Entered: 08/29/2022)
09/01/2022	<u>217</u>		SENTENCING MEMORANDUM by Douglas D Smith (Elsenheimer, Aric) (Entered: 09/01/2022)
09/08/2022	<u>218</u>		RESPONSE by Douglas D Smith re <u>216</u> Sentencing Memorandum (Elsenheimer, Aric) (Entered: 09/08/2022)
09/08/2022	<u>219</u>		SENTENCING MEMORANDUM by Douglas D Smith (Attachments: # <u>1</u> Supplement Character Letters (3))(Elsenheimer, Aric) (Entered: 09/08/2022)
09/12/2022	<u>223</u>		SENTENCING MEMORANDUM by Douglas D Smith (Attachments: # <u>1</u> Supplement Character Letters (2))(Elsenheimer, Aric) (Entered: 09/12/2022)
09/15/2022	<u>224</u>		Clerk's Minutes for proceedings held before District Judge Judith C. Herrera: Sentencing Hearing Continued as to Douglas D Smith held on 9/15/2022. (Court Reporter: Paul Baca) (gr) (Entered: 09/15/2022)
10/04/2022	<u>227</u>		<p>TRANSCRIPT of Proceedings, Sentencing Hearing as to Douglas D Smith held on 9/15/2022, before District Judge Judith C. Herrera. Court Reporter/Transcriber Paul Baca, Telephone number 505-508-6694. Transcript may be viewed at the Clerk's Office public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p>PLEASE TAKE NOTICE that each party now has seven (7) calendar days to file a Notice of Intent to Request Redaction of any personal identifiers from this transcript. If no notice is filed during this seven-day period, the court will assume that redaction of personal data is not necessary and will make the transcript electronically available, as is, to the public after 90 days. For additional guidance, PLEASE REVIEW the complete policy, located in the CM/ECF Administrative Procedures Manual at https://www.nmd.uscourts.gov.</p> <p>Notice of Intent to Request Redaction set for 10/11/2022. Redaction Request due 10/25/2022. Redacted Transcript Deadline set for 11/4/2022. Release of Transcript Restriction set for 1/2/2023.(mkl) (Entered: 10/04/2022)</p>
10/12/2022	229		NOTICE OF HEARING as to Douglas D Smith: Sentencing set for 11/10/2022 at 01:30 PM in Albuquerque – 340 Pecos Courtroom before

		District Judge Judith C. Herrera. (emr) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 10/12/2022)
11/10/2022	<u>233</u>	Clerk's Minutes for proceedings held before District Judge Judith C. Herrera: Sentencing held on 11/10/2022 for Douglas D Smith (1), Count(s) 1, SENTENCE IMPOSED: CBOP: 27 months; Supervised Release: 2 years, with Special Conditions; SPA: \$100. (Court Reporter: Paul Baca) (gr) (Entered: 11/16/2022)
11/17/2022	<u>234</u>	JUDGMENT as to Douglas D Smith by District Judge Judith C. Herrera (emr) (Entered: 11/17/2022)
11/28/2022	<u>235</u>	NOTICE OF APPEAL by Douglas D Smith re <u>234</u> Judgment (Filing Fee – Waived) (Elsenheimer, Aric) (Entered: 11/28/2022)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 18-CR-3495 JCH

DOUGLAS D. SMITH,

Defendant.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that defendant, Douglas D. Smith, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the Judgment in a Criminal Case entered in this cause on November 17, 2022.

DATED this 28th day of November, 2022.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
111 Lomas Blvd., NW, Suite 501
Albuquerque, NM 87102
(505) 346-2489
(505) 346-2494 Fax
aric_elsenheimer@fd.org

By  s/ filed electronically on 11/28/2022

ARIC G. ELSENHEIMER, AFD
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO SENTENCING MINUTE SHEET BEFORE THE HONORABLE JUDITH C. HERRERA									
CR No:	18-3495 JCH	USA vs.	Smith						
Date:	11/10/22	Defendant:	Douglas Smith						
Time In/Out:	1:37 – 2:25			Total Time in Court:			48 minutes		
Clerk:	E. Romero			Court Reporter:			Paul Baca		
AUSA:	Novaline Wilson & Kyle Nayback			Defendant's Counsel:			Aric Elsenheimer & Amanda Lavin		
Sentencing in:	Albuquerque			Probation Officer:			Ana Ortiz y Martinez		
Interpreter:	n/a			Interpreter Sworn?			<input type="checkbox"/>	Choose an item.	
Convicted on:	Verdict			As to:	Indictment			Counts:	
Guilty Plea:				Plea Agreement:					
Date of Plea/Verdict:	6/18/21	PSR:	Disputed	<input checked="" type="checkbox"/>	Courts adopts PSR Findings		Evidentiary Hrg:	Not Needed	
Exceptions to PSR:									
SENTENCE IMPOSED									
IMPRISONMENT (BOP):		27 months							
<input type="checkbox"/>	500-Hour Drug Program	<input type="checkbox"/>	BOP sex-offender treatment program			Other:			
SUPERVISED RELEASE:		2 years				<input checked="" type="checkbox"/>	Mandatory/Standard Conditions		
SPECIAL CONDITIONS OF SUPERVISION									
<input type="checkbox"/>	Participate in/successfully complete outpatient substance abuse treatment program & grant waiver of confidentiality			<input checked="" type="checkbox"/>	Submit to substance abuse testing; Testing not to exceed 60 tests per year				
<input checked="" type="checkbox"/>	Submit to search of person/property			<input checked="" type="checkbox"/>	Refrain from use/possession of alcohol/intoxicants; Testing not to exceed 4 per day				
<input checked="" type="checkbox"/>	Not knowingly purchase, possess, distribute, administer, use any psychoactive substances			<input type="checkbox"/>	Must not possess, sell, offer for sale, etc. any drug paraphernalia				
<input type="checkbox"/>	Participate in/successfully complete mental health program & grant waiver of confidentiality			<input type="checkbox"/>	Must take all mental health medications as prescribed				
<input checked="" type="checkbox"/>	Community service: 40 hours			<input checked="" type="checkbox"/>	Must not communicate, or otherwise interact, with victim's family directly or indirectly w/o approval				
<input type="checkbox"/>	Participate in an educational or vocational service program			<input type="checkbox"/>	No contact with codefendant(s)/coconspirator(s) w/o approval				
MONETARY PENALTIES / FORFEITURES									
Fine: \$	-0-	Restitution: \$	-0-	SPA: \$	100.00	Due Immediately			
Forfeit rights title & interest to:									
OTHER									
<input checked="" type="checkbox"/>	Advised of Right to Appeal			<input checked="" type="checkbox"/>	Voluntary Surrender				
<input checked="" type="checkbox"/>	Recommended place(s) of incarceration: Federal Medical Center due to defendant's age and medical issues, specifically: age related supraventricular tachycardia and macular degeneration; Court also recommends BOP place defendant in minimum confinement status; The Court is to be notified if BOP is unable to place defendant at a Federal Medical Center.								
<input type="checkbox"/>	Dismissed Counts:								
PROCEEDINGS									
Court in session – parties state appearances; Court states the majority of sentencing has been completed and parties should focus on the issue of the variance request as to age and health; Court outlines records reviewed for sentencing; Mr. Elsenheimer addresses Court for sentencing as instructed; Ms. Wilson responds; Mr. Elsenheimer rebuttal; Court addresses parties, denies request for variance and outlines reasoning; Ms. Wilson has nothing to add; Mr. Elsenheimer objects to the proposed sentence; Court imposes sentence; Defendant to report to the USMS immediately for reporting instructions; Self-surrender is typically within 60 days.									

UNITED STATES DISTRICT COURT
District of New Mexico

UNITED STATES OF AMERICA

Judgment in a Criminal Case

V.

DOUGLAS D SMITHCase Number: **1:18CR03495-001JCH**USM Number: **98017-051**Defendant's Attorney: **Aric G. Elsenheimer and Amanda Lavin****THE DEFENDANT:**

- ☐ pleaded guilty to count(s) .
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☒ was found guilty on count(s) **Involuntary manslaughter, the lesser included charge** after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<i>Title and Section</i>	<i>Nature of Offense</i>	<i>Offense Ended</i>	<i>Count</i>
18 U.S.C. Sec. 1152, 18 U.S.C. Sec. 1112	Involuntary manslaughter	05/05/2018	

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 .

- ☒ The defendant has been found not guilty on count(s) **1 of indictment, Second Degree Murder**.
- ☐ Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 10, 2022

Date of Imposition of Judgment

/s/ Judith C. Herrera

Signature of Judge

Honorable Judith C. Herrera**Senior United States District Judge**

Name and Title of Judge

November 17, 2022

Date

DEFENDANT: **DOUGLAS D SMITH**
CASE NUMBER: **1:18CR03495-001JCH**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **27 months**.

☒ The court makes the following recommendations to the Bureau of Prisons:

Defendant be placed in a Federal Medical Center due to defendant's age and medical issues, specifically: age related supraventricular tachycardia and macular degeneration; Court also recommends BOP place defendant in minimum confinement status; The Court is to be notified if BOP is unable to place defendant at a FMC as recommended.

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at on .
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on .
- ☒ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to
_____ at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **DOUGLAS D SMITH**
CASE NUMBER: **1:18CR03495-001JCH**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **2 years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(Check, if applicable.)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state, local, or tribal sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, require you to notify that person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: DOUGLAS D SMITH
CASE NUMBER: 1:18CR03495-001JCH

SPECIAL CONDITIONS OF SUPERVISION

You must not use or possess alcohol. You may be required to submit to alcohol testing that may include urine testing, a remote alcohol testing system, and/or an alcohol monitoring technology program to determine if you have used alcohol. Testing shall not exceed more than 4 test(s) per day. You must not attempt to obstruct or tamper with the testing methods. You may be required to pay all, or a portion, of the costs of the testing.

You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic cannabinoids, synthetic cathinones, etc.) that impair your physical or mental functioning, whether or not intended for human consumption.

You must not communicate, or otherwise interact, with the victim(s), either directly or through someone else without prior approval of the probation officer.

You must complete 40 hours of community service during the term of your supervised release . The probation officer will supervise the participation in the program by approving the program (agency, location, frequency of participation, etc.). You must provide written verification of completed hours to the probation officer.

You must submit to substance abuse testing to determine if you have used a prohibited substance. Testing shall not exceed more than 60 test(s) per year. Testing may include urine testing, the wearing of a sweat patch, and/or any form of prohibited substance screening or testing. You must not attempt to obstruct or tamper with the substance abuse testing methods. You may be required to pay all, or a portion, of the costs of the testing.

You must submit to a search of your person, property, residence, vehicle, papers, computers (as defined in 18 U.S.C. 1030(e)(1)), other electronic communications or data storage devices or media, or office under your control. The probation officer may conduct a search under this condition only when reasonable suspicion exists, in a reasonable manner and at a reasonable time, for the purpose of detecting firearms, deadly weapons, illegal substances or illegal contraband . You must inform any residents or occupants that the premises may be subject to a search.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: **DOUGLAS D SMITH**
CASE NUMBER: **1:18CR03495-001JCH**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

☐ The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$100.00	\$-0-	\$-0-	\$ -0-	\$-0-

- ☐ The determination of the restitution is deferred until . An *Amended Judgment in a Criminal Case* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ In full immediately; or
- B ☐ \$ due immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties: Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

The Court finds the Mandatory Restitution Act of 1996 is applicable in this case; however, no claim for restitution has been made by the victim(s) in this case. Therefore, none will be ordered.

Based on the defendant's lack of financial resources, the Court will not impose a fine or a portion of a fine. However, in accordance with U.S.S.G. 5E1.2(e), the Court has imposed as a special condition that the defendant complete community service. The Court concludes the total combined sanction without a fine or alternative sanction, other than the defendant complete community service, is sufficiently punitive.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.